No. 42481-9-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

CAITLIN CHERIE MASON,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

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Respondent's Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal Cases

Constitutional Provisions

I. ISSUES

A. Did the officer unlawfully detain and therefore seize Mason when he extended the traffic stop?

B. Did the trial court err when it denied Mason's motion to suppress the evidence obtained from Mason's purse?

II. STATEMENT OF THE CASE

On February 17, 2011, shortly before midnight, Centralia Police Officer Withrow conducted a traffic stop on a vehicle for having a defective taillight and expired tabs. RP 7.[1] Officer Withrow contacted the driver of the vehicle on the driver's side of the vehicle. RP 8. There were two adult women occupying the vehicle, the driver and a front seat passenger, and there was also a child in a car seat in the backseat of the vehicle. RPS 5; RP 7; CP 23, 40. As Officer Withrow was speaking to the driver of the vehicle, the front seat passenger, later identified as Caitlin Mason, turned her entire body and head to face the passenger window. RP 8; RPS 5. Mason's behavior caused Officer Withrow to become concerned for her safety. RPS 14-15. Officer Withrow wanted to make sure Mason was okay so he walked over to the passenger side of the vehicle to contact Mason. RP 9; RPS 6. Mason turned

[1] The VRP consists of two volumes. In an attempt to be consistent with Appellant's brief, the state will refer to the VRP containing the bench trial and sentencing on May 19, 2011 and August 17, 2011 as RP. The suppression hearing held on May 5, 2011 will be referred to as RPS.

her body and face away from Officer Withrow, now facing the driver. RP 9; RPS 6. Officer Withrow then went back to the driver's side of the vehicle to speak to the driver. RP 9. Officer Withrow attempted to contact Mason again and asked Mason if she was okay. RP 9; RPS 6. Mason was still shielding her face from Officer Withrow, which made him both concerned and suspicious. RPS 14-15. Officer Withrow asked Mason if she would mind giving him her name. RP 9; RPS 6; CP 23, 40. Mason told Officer Withrow her name was Jessica Mason. RP 9. Officer Withrow went back to his patrol car and ran Jessica Mason and found no record of a Jessica Mason in the local or department of licensing database. RP 6.

Centralia Police Officer Finch arrived on the scene as backup for Officer Withrow. RP 30; RPS 17. Officer Finch explained it was standard procedure to have other officers back you up on a traffic stop at that time of night. RP 30; RPS 17. When Officer Finch arrived Officer Withrow was at the passenger side of the vehicle. RP 31. Officer Withrow asked Officer Finch if she could identify the passenger of the vehicle. RP 31; RPS 17. Officer Finch immediately recognized the passenger as Caitlin Mason and also knew Mason had an outstanding warrant for her

arrest. RP 31; RPS 17. Officer Withrow checked Mason through dispatch which returned with a confirmed warrant for Mason's arrest. RP 31-32; RPS 7. Officer Withrow walked over to the passenger side of the car and told Mason to step out of the vehicle, which she refused to do. RP 32; RPS 7. Mason had her purse sitting on her lap while she was seated in the vehicle. RP 32; RPS 7. Officer Withrow again told Mason to step out of the vehicle and Mason again refused. RP 32; RPS 7. Officer Withrow reached into the car and took Mason's purse off of her lap and placed the purse on the top of the vehicle. RPS 7; RP 32. Officer Withrow had to physically remove Mason from the vehicle and Mason was placed into handcuffs and walked back to Officer Withrow's police car. RP 32; RPS 7. Officer Finch searched Mason's person incident to her arrest and found nothing of evidentiary value. RP 32.

Officer Withrow asked Mason if the purse belonged to her and Mason stated it did. RP 33; RPS 8, 19. Mason wanted the purse to come with her to the jail. RPS 8, 19; RP 33. There was also a diaper bag in the vehicle that belonged to Mason but she requested the diaper bag go with her child to her mother's house. RPS 19. Officer Withrow retrieved the purse off the top of the vehicle and brought it back to Officer Finch who searched the purse

on the trunk of Officer Withrow's police car. RPS 8, 20. Mason was in the back of Officer Withrow's patrol vehicle while the purse was being searched. RPS 9. Officer Finch located pills inside a bottle, which had the label torn off of it, in Mason's purse. RP 12, 34. The pills were stamped with the markings M357, which Officer Finch recognized from her prior experience to be hydrocodone. RP 34.

Mason was charged by information with one count of Possession of a Controlled Substance, to wit: Hydrocodone, on February 18, 2011. CP 1. A suppression hearing was held and the trial court ruled the evidence was admissible. *See* RPS, CP 22-24. At the suppression hearing Mason did testify that she requested her purse and her diaper bag go to her mother's house. RPS 22. Mason denied telling Officer Withrow she wanted her purse to come with her to jail. RPS 22. The trial court ruled that there was only one disputed fact and that was whether or not Mason requested her purse accompany her to jail. RPS 27. The trial court believed the officers testimony that Mason requested her purse go with her to jail. RPS 27; CP 23-24. Mason elected to have a bench trial and was convicted of Possession of a Controlled Substance, to

wit: Hydrocodone. RP; CP 39-41. Mason timely appeals her conviction. CP 56-65.

III. ARGUMENT

A. OFFICER WITHROW DID NOT ILLEGALLY DETAIN MASON WHEN HE EXTENDED THE TRAFFIC STOP.

1. Standard Of Review Regarding Finding Of Facts And Conclusions of Law.

Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." *Id.* Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011) (citation omitted). The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson,* 128 Wn. App. 179, 193, 114 P.3d

699 (2005). A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

In the present case Mason does not assign error to any of the findings of fact, therefore they are verities on appeal.

2. The Extension Of The Traffic Stop Was Justified Under Both The Articulable Suspicion Of Criminal Activity Standard And The Community Caretaking Exception.

The Washington State Constitution guarantees its citizens the right to not be disturbed in their private affairs except under the authority of the law. Const. art. I, § 7. People have a right to not have government unreasonably intrude on one's private affairs. U.S. Const. amend IV. Article One, section seven, of the Washington State Constitution protects the privacy rights of the citizens of Washington State. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Eisfeldt*, 163 Wn.2d 628, 634-35, 185 P.3d 580 (2008). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson,* 138 Wn.2d 343, 348, 979 P.2d 833 (1999). A warrantless "seizure is considered per se unconstitutional unless it

falls within one of the exceptions to the warrant requirement." *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citation omitted).

An officer may stop a vehicle for investigatory purposes upon reasonable suspicion that the driver has committed a traffic offense. *State v. Duncan*, 146 Wn.2d 166, 173-75, 43 P.3d 513 (2002), *citing Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968). Articulable suspicion that supports an investigatory stop is "a substantial possibility that criminal conduct has occurred or is about to occur." *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). In *Duncan* the Court differentiated between traffic infractions and civil infractions. *State v. Duncan*, 146 Wn.2d at 174. The court held that due to the unique set of circumstances traffic violations create probable cause was not necessary and therefore the articulable suspicion standard from *Terry* was all that is required for an officer to make a lawful stop for a traffic violation. *Id.*

"A traffic stop does not become an unlawful seizure simply because the officer inquires into matters unrelated to the justification for the stop, so long as those inquiries 'do not measurably extend the duration of the stop.'" *State v. Pettit*, 160 Wn. App. 716, 720, 251 P.3d 896 (2011), *citing Arizona v. Johnson*,

555 U.S. 323, 129 S. Ct. 781, 172 L.Ed.2d 694 (2009). A passenger riding in a vehicle that is stopped by an officer due to a traffic infraction is not seized. *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citation omitted). An officer's request for a passenger's identification is an unconstitutional seizure "unless other circumstances give the police independent cause to question the passenger." *State v. Rankin*, 151 Wn.2d at 695 (internal quotations and citation omitted).

a. Officer Withrow had an articulable suspicion that criminal conduct had occurred.

An officer must have some suspicion that the person he or she is detaining under a *Terry* stop is connected to a particular crime and not a generalized suspicion that the person detained is up to no good. *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009) (citation omitted). An officer must be able to identify "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Mendez,* 137 Wn. 2d 208, 223, 970 P.2d 722 (1999), *abrogated by Brendlin v. California,* 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (citing *Terry,* 392 U.S. at 21). When a court determines the reasonableness of the officer's suspicion it

looks at the totality of the circumstances. *State v. Bliss*, 153 Wn. App. at 204.

Officer Withrow, while conducting a routine and justified traffic stop, encountered Mason, who was a passenger in the vehicle. RPS 5. Mason's behavior was highly suspicious to Officer Withrow. RPS 14. Mason turned her entire body the opposite direction of Officer Withrow when he was at the driver's side of the vehicle. RPS 5. When Officer Withrow walked over to the passenger side of the vehicle Mason again turned her entire body facing away from Officer Withrow. RPS 5. Officer Withrow reasonably believed that Mason was attempting, rather successfully, to hide her face from Officer Withrow so he could not get a good look at Mason. RPS 15-16.

Given these circumstances it was reasonable for Officer Withrow to believe there was a reason Mason did not want him to see her face and possibly identify her. The most reasonable reason a person does not want to be identified by law enforcement is that they have a warrant for their arrest. The totality of these circumstances suggest that Officer Withrow had a clearly articulable basis for asking Mason for her identification due to her attempts to hide herself from the officer and it was highly likely she

had an outstanding warrant for her arrest. Therefore, the extension of the traffic stop and requesting of Mason's name were permissible and not an unlawful seizure.

b. Officer Withrow was conducting a valid community caretaking function when he questioned and requested identification from Mason.

An exception to the warrant requirement for a seizure of a person is when an officer is engaging in a community caretaking function. *State v. Acrey*, 148 Wn.2d 738, 749, 64 P.3d 594 (2003).

> When police officers are engaged in noncriminal, noninvestigative community caretaking functions, whether a particular stop is *reasonable* depends not on the presence of probable cause or reasonable suspicion, but rather on a balancing of the competing interest involved in light of all the surrounding facts and circumstances.

State v. Acrey, 148 Wn.2d at 748-49 (emphasis original and internal quotations omitted). A police officer can perform community caretaking functions in a multitude of circumstances, including routine checks on health and safety. *Id* at 749. The court, when determining whether a police officer's encounter with an individual is reasonable in regards to a check on health and safety, "must balance the individual's interest in freedom from the police interference against the public's interest in having the police

officers perform a community caretaking function." *Id.* at 750 (internal quotations and citations omitted).

In *Acrey*, at 12:41 a.m., officers received a report of youths fighting in an area and responded. *State v. Acrey*, 148 Wn.2d at 742. An officer saw five young males in the area who fit the caller's description so he stopped the young men and asked them if they had been fighting. *Id.* The youths stated they were just playing around and were walking to a store approximately four miles away. *Id.* After the officer determined no fighting had occurred he became concerned because of the late hour, it was a week night, and the boys were in a commercial area where there were no residences or open businesses around. *Id.* at 743. The officer asked the boys for their names and home telephone numbers and had the boys sit on the sidewalk while he called their homes. *Id.* Acrey's mother requested the officer bring him home because she did not possess a car and could not pick Acrey up. *Id.* The officer honored the mother's request (Acrey was 12 years old) and asked another officer to transport Acrey home. *Id.* The second officer, following standard police procedure, conducted a pat-down of Acrey and it was discovered he had marijuana and crack cocaine in his possession. *Id.* The Supreme Court agreed with the Court of

Appeals's reasoning that due to the totality of the circumstances the officer's actions were reasonable. *Id.* 752-53. The Court also noted that Acrey had already been legitimately detained during the investigation regarding the fighting call and the community caretaking only extended that seizure briefly. *Id.* at 752.

In the present case, Mason was riding in a vehicle that was legitimately stopped for a traffic infraction. RPS 5. Mason's behavior, as described above, turning her entire body away from Officer Withrow, caused the officer great concern. RPS 14-16. Officer Withrow was concerned that something was wrong with Mason and was trying to ensure she was okay. RPS 16. While Mason did answer the officer that she was okay, she still would not show him her face. RPS 6. Concerned for Mason's safety, Officer Withrow asked Mason her name to see if he could identify her. RPS 6. Mason was only detained for a brief time prior to her arrest. Officer Withrow did not know if something was wrong with Mason, if she was sick, injured, a potential missing person, there are many possible reasons why Mason shielded her entire body from Officer Withrow's view. Given the totality of the circumstances, Officer Withrow's actions were reasonable and therefore Mason was

lawfully seized while Officer Withrow performed a community caretaking function.

B. THE WARRANTLESS SEARCH OF THE PURSE MASON WAS HOLDING AT THE TIME OF HER ARREST WAS PERMISSIBLE, THEREFORE THE TRIAL COURT CORRECTLY RULED THAT THE EVIDENCE OBTAINED FROM THE PURSE WAS ADMISSIBLE.

Probable cause is required to be established prior to the government obtaining a warrant to search. U.S. Const. amend IV. The general rule is that warrantless searches are considered per se unreasonable. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2026, 29 L.Ed.2d 564 (1971). It is the State's burden to show that a warrantless search falls within an exception to this rule. *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980), *citing Arkansas v. Sanders*, 448 U.S. 753, 759, 99 S. Ct. 2586, 2590, 61 L.Ed.2d 235 (1979). "The exceptions to the requirement of a warrant have fallen into several broad categories: consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view, and *Terry* investigated stops." *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996).

1. A Search Of A Person And His Or Her Personal Belongings In That Person's Immediate Control Incident To Arrest Is Permissible.

When a person is under actual, lawful custodial arrest he or

she may be searched incident to that arrest. *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L.Ed.2d 427 (1973); *State v. O'Neill,* 148 Wn.2d 564, 585, 62 P.3d 489 (2003); *State v. Smith*, 119 Wn.2d 675, 678, 835 P.2d 1025 (1992). The right to search incident to arrest is of long pedigree in English and American law. *Weeks v. United States*, 232 U.S. 383, 392, 34 S. Ct. 341, 58 L. Ed. 652 (1914).[2] Because the purpose of the search is to ensure officer safety and the preservation of evidence, only the area within the arrestee's reach is subject to search. *Chimel v. California*, 395 U.S. 752, 755-63, 89 S. Ct. 2034, 23 L.Ed.2d 685 (1969). This is the area from which the arrestee might obtain a weapon or destructible evidence. *Id.*

The search incident to arrest rule is per-se, therefore a law enforcement officer is not required to make fine distinctions regarding whether its officer-safety rationale is satisfied in any individual case:

> We do not think the long line of authorities of this Court dating back to *Weeks*, or what we can glean from the history of practice in this country and in England, requires such a case-by-case adjudication. A police officer's determination as to how and where to search the person of a suspect whom he has

[2] Noting that "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested . . . . has been uniformly maintained in many cases"

> arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.

United States v. Robinson, 414 U.S. at 235.

The right also applies to searches of all containers in the defendant's possession. *E.g., id.* at 236 (cigarette package containing heroin); *Draper v. United States*, 358 U.S. 307, 314, 79 S. Ct. 329, 3 L.Ed.2d 327 (1954) (search of bag in the defendant's hand at the time of arrest was lawful incident to arrest). The right is limited to containers of a type from which the defendant "might gain possession of a weapon or destructible evidence." *United States v. Chadwick*, 433 U.S. 1, 14-15, 97 S. Ct. 2476, 53 L.Ed.2d 538 (1977),[3] *overruled on other grounds by California v. Acevedo*, 500 U.S. 565, 111 S. Ct. 1982 (1991).

The search must be substantially contemporaneous with the arrest and within the same area. *Vale v. Louisiana*, 399 U.S. 30, 34, 90 S. Ct. 1969, 26 L.Ed.2d 409 (1970). A search remote in time

[3] Disapproving of a search of a 200-pound, double-locked footlocker an hour after the arrest

or place from the arrest is not incident to it. *E.g.*, *Preston v. United States*, 376 U.S. 364, 367-68, 84 S. Ct. 881, 11 L.Ed.2d 777 (1964);[4] *Stoner v. California*, 376 U.S. 483, 487, 84 S. Ct. 889, 11 L.Ed.2d 856 (1964).[5] But a search of the defendant's personal effects within his or her wingspan, made at the time and place of the arrest, is lawful even if by the time the search occurs the defendant is detained and the officer has control of the items. *See United States v. Garcia*, 605 F.2d 349, 352 (7th Cir. 1979), *cert. denied*, 446 U.S. 984 (1980);[6] *United States v. Mehciz*, 437 F.2d 145, 146-148 (9th Cir. 1971).[7]

The United States Supreme Court ruled it was constitutional for a law enforcement officer to search the passenger compartment of an arrestee's automobile incident to arrest. *New York v. Belton*, 453 U.S. 454, 460, 101 S. Ct. 2860, 69 L.Ed.2d 768 (1981). The Court further held, "[i]t follows from this conclusion that the police may also examine the contents of any containers found within the

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[4] In *Preston* the Court found that a search of car at garage, where it was towed after its occupants had been arrested and taken to the police station, was not incident to arrest.
[5] In *Stoner* the Court stated, "[T]he search of the petitioner's hotel room in Pomona, California, on October 27 was not incident to his arrest in Las Vegas, Nevada, on October 29."
[6] Upholding a search in which the defendant dropped her suitcases right before arrest, was moved away while being arrested, and another officer brought the suitcases over and searched them.
[7] Finding a search of the defendant's suitcase, after he was cuffed but in the same spot as the arrest, indistinguishable from *Draper* and therefore approved under *Chimel.*

passenger compartment, for if the passenger compartment is within reach of the arrest, so also will the containers in it be within his reach. Such container may, of course, be searched whether open or closed..." *New York v. Belton,* 453 U.S. at 460-61 (citations omitted).

The Washington State Supreme Court decided that pursuant to the Washington State Constitution and case law a law enforcement officer may search the passenger compartment of a vehicle incident to arrest for evidence and weapons. *State v. Stroud*, 106 Wn.2d 144, 152, 720 P.2d 436 (1986). The Court further held that locked containers found during a search of the passenger compartment of a motor vehicle incident to arrest may not be searched without first obtaining a warrant. *State v. Stroud*, 106 Wn.2d at 152. The Court reasoned that there was a heightened expectation of privacy in a locked container found inside a car. *Id.*

The United State Supreme Court later decided a search of an automobile incident to a recent occupants arrest only pertains to certain limited circumstances. *Arizona v. Gant*, 556 U.S. 332, 351, 129 S. Ct. 1602, 173 L. Ed. 2d 485 (2009). The exceptions allowed by the Supreme Court in *Gant* are (1) if at the time of the search,

the passenger compartment of the vehicle is within the arrestee's reach, and (2) "reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant,* 556 U.S. at 351. In *Gant* the crime of arrest was driving on suspended license. Gant was arrested, handcuffed and placed in the back of the patrol car. It was not reasonable to believe that the vehicle would contain evidence of Gant driving on a suspended license.

The United States Supreme Court looked at *Chimel, Belton* and the Fourth Amendment of the United States Constitution when it examined the search incident of a vehicle incident to arrest in *Gant*. *See, New York v. Belton*, 453 U.S. 454; *Chimel v. California*, 395 U.S. 752. The Court discussed how the *Chimel* holding was that a search incident to arrest was justified by the interest of officer safety and evidence preservation. *Arizona v. Gant,* 556 U.S. at 337-38. This interest created an exception to the warrant requirement. *Id.* The Court looked at the reasonableness of a warrantless search and held that automobiles create unique circumstances which justify a search incident to a lawful arrest when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. *Id.* at 350.

Washington law quickly followed *Gant* in limiting searches of automobiles incident to arrest of a recent occupant of the automobile. *State v. Patton*, 167 Wn.2d 379, 394, 219 P.3d 651 (2009); *State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009). The Washington State Supreme Court found that the *Belton* and *Stroud* rule could not survive the heightened privacy guaranteed under Article One, section seven of the Washington State Constitution and therefore effectively eliminated warrantless searches of automobiles except in very limited circumstances. *State v. Valdez*, 162 Wn.2d at 760. In many aspects, the courts have now been treating the privacy rights in an automobile similar to the right of privacy one has in their residence.

The historic justifications for search incident to arrest have been applied by the Washington State Supreme Court. *State v. Smith*, 119 Wn.2d 675. A person who has been arrested has a diminished expectation of privacy. *State v. Jordan*, 92 Wn. App. 25, 30, 960 P.2d 949 (1998), *citing State v. White*, 44 Wn. App. 276, 278, 722 P.2d 118, *review denied*, 107 Wn.2d 1006 (1986). This diminished privacy interest "includes personal possession closely associated with the person's clothing." *State v. Jordan*, 92 Wn. App. at 30. Also the property which has been "seized incident

to a lawful arrest may be used to prosecute the arrested person for a crime other than the one for which he was initially apprehended." *State v. Jordan*, 92 Wn. App. at 30.

In *Jordan* police found on two separate occasions closed containers on Jordan when he was arrested on an outstanding warrant. *State v. Jordan*, 92 Wn. App. at 26. The court held that search of the closed containers, a pill bottle and a film canister, were valid searches under the search incident to arrest exception to the warrant requirement. *Id.* at 30.

In *Smith* the officer had to chase Smith down and during a struggle Smith's fanny pack fell off. *See, State v. Smith*, 119 Wn.2d 675. After arresting Smith the officer went back, retrieved the fanny pack and searched it incident to Smith's arrest. *Id.* The Washington State Supreme Court held that the search, incident to arrest, of the fanny pack was permissible and the evidence obtained from that search was admissible. *Id.* at 684. The Court reasoned that "Smith was in actual physical possession of the fanny pack just prior to the arrest, and the fanny pack was within his reach at the moment of arrest. For search incident to arrest purposes, therefore, the fanny pack was in his control at the time of arrest." *Id.* at 682.

In the present case Officer Withrow contacted Mason while she was a passenger in a vehicle. RPS 5. Mason had her purse sitting on her lap while she was seated in the front passenger seat of the car. RPS 7; CP 23. After Mason was identified by Officer Finch, Officer Withrow ran Mason's information and found she had an outstanding warrant for her arrest. RPS 7; CP 23. Officer Withrow walked back over to the vehicle and informed Mason she was under arrest and told her to step out of the vehicle. RPS 7. Mason refused to exit the vehicle. RPS 7; CP 23. Officer Withrow reached into the vehicle, picked the purse up off of Mason's lap, placed the purse on the hood of the vehicle and physically removed Mason from the vehicle. RPS 7-8; CP 23. After Mason was placed in the back of Officer Withrow's patrol car, but prior to being transported from the scene, Mason's purse was searched incident to her arrest. RPS 8-9, 20; 24. Inside the purse Officer Finch found two pills that were determined to be hydrocodone. RP 12, 34; CP 41.

Officer Finch's search of the purse is justified under the search of a person incident to arrest. Mason had possession of the purse up until her arrest. If an officer can search a person incident to arrest, even once they are handcuffed, for officer safety and

destruction of evidence, than a search of the personal belongings that were in the arrestee's custody or control, under the same reasoning is permissible. This would include a purse that was easily accessible and on the arrestee's person, in this case sitting on her lap, at the time of the arrest pursuant to *Smith*. A person has a diminished expectation of privacy in their person once they are arrested and this diminished expectation would also transfer to their personal belongings in their possession at or near the time of arrest. The trial court properly ruled that the evidence contained within the purse was admissible pursuant to a search incident to arrest. Mason's conviction should be affirmed.

2. An Inventory Of The Purse Is Permissible Under The Facts Of Mason's Case.

The State's position is that the search of the purse was a valid search incident to arrest. In the alternative, the State also argues that under the totality of the circumstances in Mason's case, the search of the purse was also permissible as an inventory.

Unreasonable searches are prohibited by the Fourth Amendment of the United States Constitution. The Washington State Supreme Court has held:

> The determinative test, therefore, of the legality of the search is its reasonableness under **all of the circumstances**. What might be deemed a

> reasonable search of a motor vehicle without a warrant, might not apply to the search of a home, a store, or similar property. It may be admitted that, in some cases, the court will be faced with the difficulty of distinguishing between a reasonable and lawful inventory procedure and an unauthorized exploratory search.

State v. Montague, 73 Wn.2d 381, 389, 438 P.2d 571 (1968) (emphasis added). In *Montague* the defendant was arrested for a traffic violation and was going to be released on his personal recognizance. *State v. Montague,* 73 Wn.2d at 383. While the officer was driving the defendant back to his car, the officer was informed there was a warrant for the defendant's arrest and the defendant could only be released upon the posting of bail. *Id.* The defendant was returned to the police station and the officer returned to the car for the purposes of preparing the car for impoundment and checking the vehicle's registration. *Id.* The protocol was that the car would be searched for valuables and any valuables discovered would be taken to the police department for safekeeping. *Id.* The officer discovered marijuana in the defendant's car. *Id.* The Supreme Court found that the defendant's Fourth Amendment rights were not violated by the officer searching the vehicle in preparation for impoundment under the totality of the circumstances in the case. *Id.* at 389-90.

The Washington State Supreme Court has also previously held that closed containers should be inventoried as a whole unit. *State v. Houser*, 95 Wn.2d 143, 156-58, 622 P.2d 1218 (1980). The Court held that under the balancing test set forth by the Court in *Montague*, weighing a person's interest in their personal luggage against societal and governmental interest in inventorying items, a closed piece of luggage should be inventoried as a whole unit absent indication of dangerous contents. *Id.* at 158. In *Houser* police inventoried a closed toiletry case found inside a locked car trunk. The Court found the search impermissible. *Id.* at 159

In the present case Officer Finch's inventory search of the purse was reasonable. There was a departmental policy that any items that were to be placed in a patrol vehicle must be searched for safety purposes. RPS 8-9. Under the totality of the circumstances, it would be unreasonable to expect a police officer, considering officer safety, to place items within his patrol car that were not fully searched. Mason requested her purse accompany her to the jail. The inventory of the purse was permissible under the facts of this case and Mason's conviction should be affirmed.

IV. CONCLUSION

For the reasons argued above this court should affirm Mason's conviction.

RESPECTFULLY submitted this 12th day of March, 2012.

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March 12, 2012 - 2:14 PM

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Sender Name: Teresa L Bryant - Email: **teri.bryant@lewiscountywa.gov**

A copy of this document has been emailed to the following addresses:

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